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ABSTRACT

This issue brief explores the problem of child pornography and teenage prostitution and examines some of the strategies federal, state, and local governments employ to address these social problems. After a brief review of Congressional actions and Supreme Court decisions, state statutes affecting pornography and prostitution are reviewed, and innovative state approaches (including Georgia's comprehensive legislative package for combating pornography) are described. Options state legislators might consider when reviewing legislative initiatives are listed. These concern various ways of strengthening and clarifying laws, solving evidentiary questions, and making administrative changes. In conclusion, programs addressing the specific needs of young victims of sexual exploitation are discussed. (RH)

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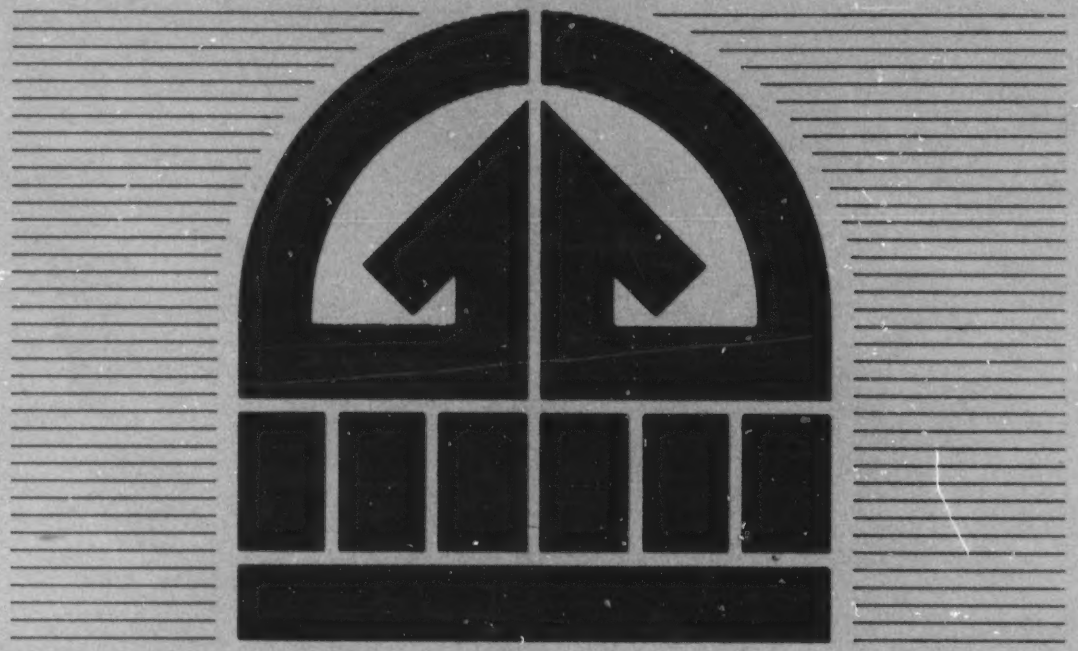

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SEXUAL EXPLOITATION OF CHILDREN AND YOUTH

Vol. 8, No. 6 October, 1983

by

Shelley A. Friend

An Information Service of the National Conference of State Legislatures
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Sexual Exploitation of Children and Youth

by

Shelley A. Friend

NCSL Youth Services Project

INTRODUCTION

Sexual exploitation of children--an insidious form of child abuse--is the focus of increasing concern in America. In the past six years, state legislatures have tried to respond to these concerns, however, the legislative approach has been piecemeal, primarily addressing definitional problems. Only one state, Georgia, has succeeded in passing what is viewed as a comprehensive legislative package dealing with pornography, and no state has passed in-depth laws to fight teenage prostitution.

This issue brief explores the problem of child pornography and teenage prostitution and examines some of the strategies federal, state, and local governments employ to address this social problem. It studies the approach taken in Georgia and, finally, it highlights innovative programs designed to assist teenage prostitutes.

THE PROBLEM

Scope. Experts disagree about the actual number of sexually exploited children and youth in our country because the business of sexually exploiting children is covert and data are difficult to gather and to substantiate. Estimates range from 300,000 to 1.2 million young Americans who are involved in commercial pornography or prostitution.[1] Available trend data indicate that juvenile prostitution is increasing, while commercial child pornography is decreasing. The two problems are interrelated, however.[2] Many times the activities of young prostitutes are filmed and sold to distributors.

Child pornography, sometimes called "kiddie porn," refers to films, photographs, magazines and books depicting children in explicit heterosexual or homosexual acts.[3] Producing, distributing and selling child pornography are the three key elements of the "trade." Researchers agree that commercially produced pornography for profit has declined. Some factors noted for the drop are:

- o passage of the Protection of Children Against Sexual Exploitation Act of 1977 by Congress;
- o some tougher state laws against child pornography;
- o stricter enforcement of obscenity laws involving child pornography;
- o increased media attention;

- o tendency of juries to convict child pornographers more quickly than adult pornographers; and
- o the ban of child pornography imports from Sweden and Denmark (the major overseas suppliers) in 1979.

While commercial "kiddie porn" has declined, many authorities concur that today child pornography continues to flourish underground through a network of pedophiles who trade, instead of sell, their goods.[4] Some law enforcement agencies have not considered non-commercial child pornography a high priority.

Statistics on teenage prostitution are difficult to obtain because of the unwillingness of the people involved to disclose any information. It is agreed, nonetheless, that the incidence of teenage prostitution has increased.[5] Possible reasons for the increase include high unemployment among youth, lack of education and information about prospective jobs, and dissolution of the family support structure.

Characteristics of the Victims. Current research reveals that young prostitutes and victims of child pornography share some of the same characteristics. Typically, these children are:

- o between the ages of eight and 17;
- o from families where one or both parents are absent and parental supervision is lacking;[6]
- o from unhealthy home environments which often lack strong religious or moral structure; and
- o from low socio-economic backgrounds.

Often, victims of sexual exploitation are runaways, underachievers, or abused and neglected children. Young girls involved in prostitution frequently have experienced rape or incest. Boys in prostitution usually have no previous homosexual experience.[7]

Characteristics of Perpetrators. Child pornography depends on people, known as pedophiles, who are stimulated by sexual activities with children. Research has shown that pedophiles do not fit into the stereotype of the "dirty old man." Many times they are young or middle-aged adults and are married or have sexual involvement with adults. Some people believe sex offenders physically injure the young victims and are heavily involved with drugs and alcohol, however these myths are false. Pedophiles are stimulated when they control, rather than hurt, the child, and data indicate that they are usually not intoxicated. With younger children, a pedophile usually earns a child's confidence by buying gifts and enticing the child into compromising situations.

FEDERAL ACTIVITIES.

Prior to 1977, few laws, either federal or state, existed to combat the problem of child pornography and prostitution. Today, federal legislation addresses interstate trafficking of child pornography and a 1982 U.S. Supreme Court case clears the way for strong state laws to combat pornography.

Congressional Action. In 1978, the Congress enacted the Protection of Children Against Sexual Exploitation Act to extend federal authority to prosecute distributors and producers of child pornography.[8] Through federal controls of the postal service and interstate commerce, Congress outlawed much of the production, mailing, and trafficking of child pornography. This legislation also prohibits transporting children across state lines for sexual exploitation. The law provides for stronger sanctions against those sexually exploiting young people for financial gain. It does not, however, address the issue of pedophiles who exchange, rather than sell, their products.

More recently, the U.S. Senate passed amendments which would extend coverage of the act to non-commercial and non-obscene pornography. (The obscenity standard was established by the U.S. Supreme Court case Miller v. California, 413 U.S.15 (1973), which requires proscribed material be judged by "contemporary community standards, taken as a whole.") The amendments would raise the fine applicable to offenses, raise the age limit of the exploited children from 16 to 18, remove the obscenity requirement, and prohibit shipping any child pornography across state lines. This bill is currently in the House Judiciary Committee.

Court Decision. In 1982, The U. S. Supreme Court in New York v. Ferber, 102 S.Ct. 3348, unanimously affirmed the constitutionality of state laws which outlaw dissemination of films and other materials depicting children engaging in sexual conduct regardless of whether the material is legally obscene.[9] The Ferber decision clarified the issue of prohibiting child pornography which had been unresolved in earlier federal court cases. Paul Ferber, owner of a Manhattan bookstore specializing in pornography, was indicted for: promoting a sexual performance by a child and promoting an obscene sexual performance by a child. The jury acquitted him on the charges of promoting obscene sexual performance by a child, but found him guilty of promoting a sexual performance of a child. New York's Court of Appeals ruled that the law that prohibits promoting non-obscene sexual performance by a child violates the First Amendment. The Supreme Court, however, upheld the state's statute. Supreme Court Justice Byron White, speaking for the court, said that using children as subjects of pornographic materials "is harmful to the psychological, emotional, and mental health of the child" and that preventing "sexual exploitation and abuse of children constitutes a government objective of surpassing importance." This decision allows states to strengthen their state laws with regard to the obscenity requirement, prohibit non-commercial pornography, and permit the exploited children to sue for damages.

STATE PERSPECTIVE

The states have followed the federal government's lead to curb sexual exploitation of children and youth. Today, almost every state has passed laws to battle the problem. However, few states have comprehensive laws addressing child pornography or teenage prostitution.

This section will review state statutes affecting pornography and prostitution, describe innovative state approaches, and detail the comprehensive package recently passed in Georgia.

Pornography Laws. As of 1980, 11 states had statutes covering the four categories of offenders in pornography cases--producers, coercers, distributors, and parents. These states are Arkansas, California, Connecticut, Illinois, Maine, New Jersey, New York, Oklahoma, Texas, West Virginia, and Wisconsin.[10] Forty-eight states (all but Vermont and Wyoming) hold producers of pornography criminally liable, and most states outlaw coercion of children.[11] Only a few states, however, allow for the prosecution of parents as violators for pornography activities. A total of 32 states follow federal law by specifically holding distributors responsible for promoting child pornography. (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas).[12]

Prostitution Laws. State laws on child prostitution usually cover procuring, causing, encouraging, soliciting, advancing or aiding any child under the majority age (which may range from 18 to 21) for the purpose of prostitution. Many times each aspect of prostitution is prosecuted as a different offense, and therefore the guilty adult may be subject to stiffer punishment.[13] Some states base the class or the seriousness of the offense on the age and activity of the child. The child is usually considered delinquent, rather than a violator of a status offense. Many law enforcement officers, nonetheless, try to charge the youth with running away, or violating a curfew or other status offense, as a means to refrain from labeling the offender as a prostitute.

Many states provide penalties for people who promote, advance or profit from prostituting another person. The person who financially benefits by child prostitution is more likely to receive stricter punishment. States differ, though, on whether or not a permissable defense is that the defendant believed the prostitute was not a minor. A majority of these criminal offenses are felonies with prison terms ranging from one year to life imprisonment. The average prison sentence is ten years. Fines also vary from $1,000 to $50,000 with an average of $10,000 for felony convictions. A few states consider child prostitution a misdemeanor and provide for minimal penalties of less than one year and $1,000.[14]

Innovative Approaches. Generally, the more innovative state strategies have been aimed at strengthening and clarifying laws, solving evidentiary questions, and mandating administrative changes:

- Under its child labor law, Idaho prohibits the employment of children in productions depicting sexual conduct.[15] The legislature, in 1979, also strengthened penalties for any activities which involve sexual exploitation of minors. Child labor laws provide an additional avenue for prosecuting and penalizing pornographers.
- Maryland and Hawaii have clarified their statutes on child pornography. Maryland, in 1980, amended its child abuse laws to prohibit using or permitting a child to perform in a sexually explicit act.[16] Hawaii defines the distribution of child pornography as promoting child abuse.[17] Including sexual abuse and exploitation in state child abuse laws allows existing social service programs to be expanded to assist victims of sexual

exploitation.

- o Following legislation in 1980, Arizona's criminal code now lists separate offenses outlawing child sexual exploitation.[18] The greater number of offenses increases the likelihood of successful prosecution and stiffer penalties on some aspect of sexual exploitation.
- o In 1983, Utah state legislators redefined sexual exploitation of children as a second degree felony under the state criminal code and specified that material which sexually exploits children is not protected under the First Amendment of the U.S. Constitution.[19] This addresses evidentiary problems by abolishing the defense that a perpetrator of child pornography enjoys the First Amendment's protection of freedom of speech or press.

Georgia. In 1983, Georgia became the first state to pass what is considered a comprehensive legislative package combatting pornography. The reason Georgia's legislation is viewed as comprehensive is because it addresses multiple aspects of the pornography question, whereas most other states tackle only one part of the issue. The legislation's provisions address:

- o keeping sexually explicit materials away from young people;
- o keeping pornographers from taking advantage of children and youth;
- o setting strong penalties for using minors in any type of sexually explicit or lewd performances, photographs, movies, plays, or anything of similar nature; and
- o prohibiting parents, guardians, or a person with custody of a minor to allow the young person to either assist or engage in sexually explicit conduct for performance purposes.

Violators may be subject to imprisonment from three to 20 years and may be fined up to $20,000. Effectively, this doubles the previous maximum penalty which had been one to ten years in prison and up to a $10,000 fine.[20]

OPTIONS FOR A COMPREHENSIVE APPROACH

The problem of sexual exploitation of young people may be addressed by state legislators from a variety of perspectives, and the following proposals, which have been highlighted in the previous state examples, might be considered as state legislators review initiatives on child pornography and prostitution:

Strengthen Laws

- o Prohibit any sexual acts with children and all child pornography, including non-obscene and non-commercial;
- o Strengthen penalties for crimes against children (i.e., rape, incest, sexual abuse, indecency and harm) and crimes contributing to delinquency;
- o Criminalize participating in selling or producing child pornography or inducing a minor to engage in any sexual performance;
- o Regulate "adult" bookstores through licensing, auditing, and comprehensive recordkeeping;

- o Toughen child labor laws to make minors less vulnerable to pornographers;
- o Require film processors to report and turn over negatives of sexually exploited children to law enforcement officials;
- o Confiscate assets of people who have earned their investment money illegally (i.e., prostitution, pornography, drugs);
- o Regulate modeling or photography studios who employ children:
- o Allow victims to sue perpetrators for damages and attorneys' fees and to obtain an injunction against selling or distributing the pornography.

Clarify Laws

- o Redefine state laws on obscenity or pornography in light of the Ferber decision;
- o Separate penalties for offenses which sexually exploit minors;
- o Include sexual abuse of children in child abuse statutes;
- o Increase and clarify responsibilities of juvenile courts;
- o Treat all sexual exploitation offenses involving minors as "obscene" using the community standard provisions of the Miller decision and establish strong sanctions.

Solve Evidentiary Questions

- o Increase the age limit of children who are protected by anti-pornography laws to the age of majority;
- o Allow expert witness to establish age of child victim and do not require prosecutors to establish identity of victim;
- o Eliminate, as a defense, arguments that the perpetrator had a lack of knowledge of the child's age or consent of the child, parent, or guardian.

Administrative Changes

- o Develop prevention and public information programs to inform all citizens, including children, of the severity of sexual exploitation. This may be done through the schools and other appropriate vehicles;
- o Ensure the service delivery system includes crisis intervention and rehabilitative or treatment programs for the victims;
- o Mandate child protective service or law enforcement agency to report suspected sexual abuse or exploitation to prosecutors;
- o Require the state department serving young people to assume immediate custody of sexually abused victims.

PROGRAMS FOR VICTIMS

A number of programs address the specific needs of young victims of sexual exploitation. While most of these are local programs, they receive financial and programmatic support from the state or federal governments. Programs provide outreach, residential protection, therapy, referral, community education, and coordination involving multi-disciplinary professionals.

The federal government plays a major role in funding these projects. In addition to the programs discussed below, the Department of Health and Human Services is supporting new programs dealing with prostitution in Seattle, San Francisco, New York City, and Charleston, W.V.

The Chrysalis Project in Denver, Colorado, is a highly specialized outreach and residential treatment program for young people between 12 and 18 who are either vulnerable to or engaged in prostitution. The trained professionals who staff the project offer a broad range of therapeutic services to help youth consider alternatives to prostitution. Referrals come primarily from law enforcement officers, juvenile judges and public educators.

An estimated 90 to 95 percent of the clients were sexually abused between 3 and 12 years of age. Almost all come from violent, dysfunctional families with a high level of drug and alcohol abuse. Many of the young people come to the project with medical problems. Because of these factors, these youth initially may be involved in truancy, running away, stealing, and lying. Chrysalis maintains that these behavior patterns indicate the client's attempt to obtain recognition or gratification, regardless of their needs for protection, affection, attention, and love.[21]

Project LUCK (Link Up the Community for Kids) of Portland, Oregon, which receives federal funding, provides direct services to juvenile prostitutes, coordinates community group services, promotes public awareness, and offers special training for professionals and volunteers in the metropolitan area. The project comprises the following parts: street outreach, residential services, employment, education, counseling, Big Brother/Big Sister Program, interagency coordination of services, and preventive and public education. Through Project LUCK, local governments, youth service agencies, schools, law enforcement officials, and citizens have united to specialize and increase services to street youth from 10 to 18 years old. They have developed prevention curricula for middle-school children and presented information to the public about the causes and effects of prostitution of young people.

The children resorting to prostitution in Portland are basically runaways who are seeking a survival mechanism. Clients are referred to LUCK by the juvenile court and social service agencies, or may be contacted by the street outreach team. Clients are, in turn, sent to the most appropriate agencies in the community.[22]

Covenant House in New York City serves over 10,000 runaways, prostitutes and troubled young people each year. Staff provide food, shelter, medical care, vocational, educational, and family counseling, and legal advocacy to their clients. The average length of stay at Covenant House is two weeks. Afterwards, about 20 percent of the clientele return home to their parents, 20 percent move to a structured residence such as a foster home and 10 percent establish independent living arrangements; but, about half return to the streets. Covenant House receives federal, state, county and private monies.[23]

CONCLUSION

Many states have addressed the issue of sexual exploitation of children and youth. While few have passed comprehensive statutes, legislatures are beginning to deal with various aspects of the problem. Legal issues, evidentiary problems, definitional concerns, and service gaps remain. Given the opportunities opened by the U.S. Supreme Court decision in Ferber, state legislatures can play a significant role in combatting the problems of child pornography and teenage prostitution in America.

FOOTNOTES

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4. U.S. General Accounting Office, Report to the Chairman Subcommittee on Select Education--House Committee on Education & Labor, Sexual Exploitation of Children--A Problem of Unknown Magnitude, April 20, 1982 p.7.
5. Ibid.
6. Ibid. p. ii.
7. Urban and Rural Systems Associates, Pier 1 1/2, San Francisco, CA 94111, (415) 398-2040.
8. P.L. 95-225, 18 U.S.C. sec. 2251-2253.
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11. Ibid.
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15. Idaho Code sec. 44-1306 (1979).
16. Md. Code Ann. Art. 27, Sec. 35A (Supp. 1980).
17. Hawaii Rev. Stat. sec. 707-750 to 751 (Supp. 1978).
18. Ariz. Rev. Stat. Ann. sec. 13-3552 (Supp. 1980).
19. Utah: HB 188. 1983 legislation
20. Georgia: HB429, 1983 legislation.
21. Author Interview with Elena Theos, Program Director, Chrysalis Project, Denver, Co., August 9, 1983.
22. Telephone interview with staff of LUCK, Portland, Oregon, August, 1983.
23. The Covenant Experience, pamphlet, Covenant House, 460 W. 41st St., N.Y., NY 10036, (212) 354-4323 n.d.

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U.S. Senate Report No. 95-438, 95th Congress, 2nd session 5, reprinted in 1978. U.S. Code Cong. and Ad. News 40, 43.

Utah: HB 188, 1983 legislation.

For further information on this topic, contact Shelley A. Friend, Senior Research Analyst - Youth Services in the NCSL Denver Office at (303) 292-6600. NCSL maintains legislative and general resource information and would appreciate receiving updates of the information contained in this report.

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YOUTH SERVICES PROJECT

PROJECT OVERVIEW

In September, 1981, the Youth Development Bureau (YDB) in the U.S. Department of Health and Human Services entered into a cooperative agreement with the National Conference of State Legislatures (NCSL) under which NCSL would provide information assistance to the nation's state legislatures. The goal of the NCSL's Youth Services project is to support the decision-making capacity of state legislatures in the area of youth services.

The project focuses on a broad range of youth services policy issues encompassing the child welfare and juvenile justice fields.

PROJECT OBJECTIVES

The project has three primary objectives:

(1) to share interdisciplinary information on services for vulnerable youth with state legislatures, state and local government agencies, and private and voluntary organizations;

(2) to provide linkages between programs servicing vulnerable youth and the state legislatures; and

(3) to establish a mechanism for systematically gathering and disseminating information on exemplary, cost-effective, and replicable models for delivering services to vulnerable youth.

PROJECT IMPLEMENTATION

The project is carried out through:

*General resource information assistance and research capabilities. NCSL maintains files of state activity concerning youth services and requests that state legislators and legislative staff send bill copies, updated information and relevant reports and articles on this subject to our Denver office c/o Michele Magri.

*On-site technical assistance to state legislatures. Formal assistance may take the form of expert testimony during pertinent hearings, while less formal assistance may include briefing meetings with legislators and legislative staff. State workshops geared to the needs of the states may also be arranged.

*A quarterly issue brief, feature article, and legislator's guide. These publications provide general and specific information on youth services.

*Concurrent session on youth services at the 1983 NCSL Annual Meeting.

*Nationwide Legislative Institute on Youth Services, April 7-9, 1983, Denver, Colorado.

PROJECT STAFF

The project manager is Michele R. Magri, who may be contacted in NCSL's Denver office at (303) 292-6600.

The federal project officer is Robert Radford, Youth Development Bureau, (202) 755-8208.